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**IN THE
COURT OF APPEALS OF INDIANA**

BRIAN M. MAXWELL,

Appellant-,

VS.

STATE OF INDIANA,

Appellee-.

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No. 48A05-0612-CR-709

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-9609-CF-216

April 10. 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Brian N. Maxwell appeals an order revoking probation and ordering him to serve the balance of his suspended sentence.

We affirm.

The facts favorable to the judgment revoking probation are that on April 15, 1997, Maxwell pled guilty to two counts of child molesting and two counts of contributing to the delinquency of a minor. The plea agreement called for, among other things, a nineteen-year sentence, with fourteen years executed and five years suspended to probation. Judgment of conviction was thereafter entered consistent with those terms. Maxwell was released to probation on June 29, 2003.

On April 2, 2004, the Madison County Probation Department (MCPD) filed a petition alleging Maxwell violated his probation by having a relationship with and then marrying a sixteen-year-old girl, and failing to comply with sex-offender treatment. The court found that Maxwell had violated the conditions of probation and sentenced him to time served. The court also reinstated probation and ordered Maxwell to complete sex offender counseling.

On June 21, 2005, the MCPD filed a second petition for violation of probation, this one alleging the following violations: (1) Maxwell committed battery on a woman on May 29, 2005, and (2) Maxwell tested positive for cannabinoids on June 16, 2005. Maxwell thereafter admitted using marijuana and a hearing was set ninety days hence to allow Maxwell time to complete outpatient drug counseling. No further action was taken until June 14, 2006, when the MCPD filed an amended petition for violation of probation. The amended petition added three allegations to the ones set out in the June 21, 2005 petition.

The new allegations were that, on June 11, 2006, Maxwell (1) a serious violent felon, knowingly possessed a firearm, (2) operated a vehicle while intoxicated, and (3) “did knowingly resist, obstruct or interfere with a law enforcement officer, while the officer was lawfully engaged in the execution of his duties.” *Appellant’s Appendix* at 60.

A revocation hearing was held on July 10, 2006. There, Maxwell admitted he had operated a vehicle while intoxicated, and once again admitted the June 21, 2005 marijuana allegation, but did not admit the other allegations. Based upon these admissions, the trial court found that Maxwell had violated the conditions of probation and ordered him to serve the previously suspended five-year sentence.

Maxwell does not challenge the finding of probation violations. Rather, he challenges the sanction, i.e., executing the previously suspended sentence. Maxwell articulates his reasoning as follows: “Alcoholism is a disease. It is an abuse of discretion revoke [sic] the probation of a defendant who is an alcoholic and unable to stop drinking. It is also an abuse of discretion to revoke probation for the full executed sentence for the relatively minor infractions in this case.” *Appellant’s Brief* at 3. We review decisions to revoke probation for an abuse of discretion. *Marsh v. State*, 818 N.E.2d 143 (Ind. Ct. App. 2004). An abuse of discretion occurs if the decision is against the logic and effect of the facts and circumstances before the court. *Id.*

In support of his argument that revocation is not appropriate when the violation is intoxication and the probationer is an alcoholic, Maxwell cites two cases, *State v. Oyler*, 436 P.2d 709 (Idaho 1968) and *Sweeney v. United States*, 353 F.2d 10 (7th Cir. 1965), holding that a court may not impose the condition of abstaining from the consumption of alcohol if

the probationer is unable to control the urge to drink.¹ Maxwell's argument misses the mark, however, because mere intoxication was not the basis for revoking his probation. Rather, it was the crimes of *operating a motor vehicle while* intoxicated and of using marijuana that were cited as bases for revocation. Thus, even assuming for the sake of argument that Indiana adopted the rationale espoused in *Oyler* and *Sweeney*, it would not benefit Maxwell here.

We also note Maxwell's claim that the revocation court's comments reveals that it based its decision upon the most serious of the allegations, i.e., the one involving firearms, although Maxwell denied have committed the underlying acts and the court did not enter a finding of violation in that respect. Although the trial court did mention the firearms charge,² it also discussed the drunk driving and marijuana violations, e.g.,

So now not only do I have you with an OWI but you got a history of marijuana and you're at The Three Pigs [bar] falling down drunk over 2.0 [blood-alcohol content] on probation. Yeah, you relapsed. ... Relapsed and you risked everybody else's life in Madison County because you're driving that car drunk, at least you tried.

Transcript at 33. Thus, we reject the assertion that revocation was based to any appreciable extent upon the firearms allegations. We must, therefore, decide whether the court abused

¹ The following excerpt from *Oyler* illustrates the rationale common to both:

That a person may be powerless to abstain from more or less continuous drinking to excess of alcoholic beverages has been formally recognized by medical and by legal authorities. Knowingly to impose a probationary condition of total abstention upon such a person, and revocation of probation for his predestined failure to keep that condition, would be patently as vindictive as demanding a lame person run for his freedom; and if during probation the judge was to discover probationer was such a person, it would be impermissibly unjust not to remove that condition.

State v. Oyler, 436 P.2d at 712.

² Maxwell admitted that there were guns in the trunk of the car he was driving when arrested for driving while intoxicated, but claimed they were not his and he did not know they were in the trunk.

its discretion in executing the previously suspended sentence based upon the admitted OWI and marijuana violations.

If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation, revocation of probation is appropriate. *M.J.H. v. State*, 783 N.E.2d 376 (Ind. Ct. App. 2003), *trans. denied*. It is well established that proof of a single violation of the conditions of probation is sufficient to support a decision to revoke probation. *See, e.g., Bussberg v. State*, 827 N.E.2d 37 (Ind. Ct. App. 2005) *trans. denied*. In this case, Maxwell admitted that, while on probation, he committed the crime of operating a vehicle while intoxicated and the crime of using marijuana. Those violations, established by his admissions, were sufficient to support revocation and to support execution of the previously suspended sentence.

Judgment affirmed.

KIRSCH, J., and RILEY, J., concur.